

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1015 (GBW)
)	
SAREPTA THERAPEUTICS, INC.,)	
)	
Defendant.)	
<hr/>		
SAREPTA THERAPEUTICS, INC. and THE)	
UNIVERSITY OF WESTERN AUSTRALIA,)	
)	
Defendant/Counter-Plaintiffs,)	
)	
v.)	
)	
NIPPON SHINYAKU CO., LTD.)	
and NS PHARMA, INC.)	
)	
Plaintiff/Counter-Defendants.)	

**SAREPTA THERAPEUTICS, INC. AND THE UNIVERSITY OF WESTERN
AUSTRALIA’S MOTION FOR SUMMARY JUDGMENT OF NO INEQUITABLE
CONDUCT AND NO *WALKER PROCESS* FRAUD RELATING TO
U.S. PATENT NOS. 9,994,851; 10,227,590; AND 10,266,827 (MOTION #3)¹**

Pursuant to Federal Rule of Civil Procedure 56, Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia (“UWA”) respectfully move for entry of summary judgment that: (1) U.S. Patent Nos. 9,994,851; 10,227,590; and 10,266,827 are not unenforceable based on inequitable conduct; and (2) there is no *Walker Process* fraud. The grounds for this Motion are set forth in the Opening Brief in support thereof, filed concurrently.

¹ Pursuant to the Court’s Scheduling Order (D.I. 143, ¶13(d)), Sarepta and UWA rank this motion as the third of their three summary judgment motions.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

OF COUNSEL:

/s/ Megan E. Dellinger

Charles E. Lipsey
J. Derek McCorquindale
Ryan P. O'Quinn
L. Scott Burwell
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
1875 Explorer Street, Suite 800
Reston, VA 20190-6023
(571) 203-2700

Jack B. Blumenfeld (#1014)
Megan E. Dellinger (#5739)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
mdellinger@morrisnichols.com

William B. Raich
Michael J. Flibbert
John M. Williamson
Yoonhee Kim
Yoonjin Lee
Kaitlyn S. Pehrson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
(202) 408-4000

*Attorneys for Defendant/Counter-Plaintiffs
Sarepta Therapeutics, Inc. and The University of
Western Australia*

Alissa K. Lipton
Eric J. Lee, Ph.D.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Seaport Lane
Boston, MA 02210-2001
(617) 646-1600

Amanda P. Reeves
Anna M. Rathbun
Graham B. Haviland
Jesse Aaron Vella
Michael A. Morin
David P. Frazier
Rebecca L. Rabenstein
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
(202) 637-2200

Ernest Yakob
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

December 11, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1015 (GBW)
)	
SAREPTA THERAPEUTICS, INC.,)	
)	
Defendant.)	
<hr/>		
SAREPTA THERAPEUTICS, INC. and THE)	
UNIVERSITY OF WESTERN AUSTRALIA,)	
)	
Defendant/Counter-Plaintiffs,)	
)	
v.)	
)	
NIPPON SHINYAKU CO., LTD.)	
and NS PHARMA, INC.)	
)	
Plaintiff/Counter-Defendants.)	

**[PROPOSED] ORDER GRANTING SAREPTA THERAPEUTICS, INC. AND THE
UNIVERSITY OF WESTERN AUSTRALIA’S MOTION FOR SUMMARY
JUDGMENT OF NO INEQUITABLE CONDUCT AND
NO *WALKER PROCESS* FRAUD RELATING TO
U.S. PATENT NOS. 9,994,851; 10,227,590; AND 10,266,827 (MOTION #3)**

Having considered Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia’s (“UWA’s”) motion for summary judgment that: (1) U.S. Patent Nos. 9,994,851; 10,227,590; and 10,266,827 are not unenforceable based on inequitable conduct; and (2) there is no *Walker Process* fraud, and all related papers filed in connection therewith,

IT IS HEREBY ORDERED that Sarepta and UWA’s Motion is **GRANTED**: Nippon Shinyaku Co., Ltd. and NS Pharma, Inc.’s (collectively “NS’s”) unenforceability affirmative defense (Eleventh Defense) and counterclaim (Counterclaim X) and NS’s *Walker Process* counterclaim (Counterclaim XI) are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this ____ day of _____, 2024.

The Honorable Gregory B. Williams
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on December 11, 2023, upon the following in the manner indicated:

Amy M. Dudash, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1201 North Market Street, Suite 2201
Wilmington, DE 19801
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Amanda S. Williamson, Esquire
Christopher J. Betti, Esquire
Krista Vink Venegas, Esquire
Maria E. Doukas, Esquire
Michael T. Sikora, Esquire
Zachary Miller, Esquire
Guylaine Haché, Ph.D.
Wan-Shon Lo, Esquire
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Alison P. Patitucci, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Jitsuro Morishita, Esquire
MORGAN, LEWIS & BOCKIUS LLP
16F, Marunouchi Building,
2-4-1 Marunouchi, Chiyoda-ku
Tokyo, 100-6316 Japan
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)